

## **Chapter 296-843 WAC, Hazardous Waste Operations Concise Explanatory Statement**

The Hazardous Waste Operations rule was rewritten and reorganized for clarity and ease of use for employers and employees. The rule was also revised to require refresher training for supervisors and medical surveillance for people who wear respirators for 30 or more days a year. These changes were the result of being not at least as effective as the OSHA requirements.

### **1. Comment Received Relating to this Section:**

#### **WAC 296-843-100 Scope**

We understand that, with the exception of changes to two provisions of the rule as a result of a not at least as effective as determination, the proposed revisions are only intended to add clarity for ease of use for employers and employees. We note that there are additional changes that alter the content of the rule. The changes in content are not reflected in your preliminary statement of rulemaking, thus we question whether this rulemaking is consistent with the Administrative Procedures Act.

For example, the scope of the existing rule applies to “clean-up operations.” Clean-up operations are defined in the existing rule as an “operation where hazardous substances are removed, contained, incinerated, neutralized, stabilized, cleaned-up, or in any other manner processed or handled with the ultimate goal of making the site safer for people or the environment.” This is in keeping with our understanding of the rule’s original intent, i.e. protection of clean-up and hazardous materials workers.

#### **Department Response to Comment:**

Rule changed.

Language has been rewritten to better clarify application of the rule to clean-up operations. The item from the scope was rewritten to read as follows:

- Employees performing clean-up operations at an uncontrolled hazardous waste site. Sites include, but are not limited to:
  - The Environmental Protection Agency’s (EPA) National Priority Site List (NPL); see <http://www.epa.gov/superfund/sites/npl/wa.htm>;
  - Sites recommended for inclusion on the EPA NPL;
  - State priority site lists, for example those listed under chapter 173-340 WAC, Model Toxics Control Act (MTCA); see <http://www.ecy.wa.gov/programs/tcp/cscs/CSCSpage.HTM>;
  - Unlisted sites recognized by a federal, state or local government as an uncontrolled hazardous waste site. Examples of such sites include:
    - Sites that do not meet clean-up goals established by the MTCA and that pose a threat or potential threat to human health or the environment;

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- Clandestine drug lab sites designated for cleanup;
- Postemergency response cleanup at the site of a hazardous substance release regulated by chapter 296-824 WAC, Emergency response.

### **2. Comment Received Relating to this Section:**

#### **WAC 296-843-100 Scope**

The proposed revised rule expands the scope and application to include workers on any site that does “not meet clean-up goals established by the Model Toxics Control Act and that pose a threat or potential threat to human health or the environment.” The “ultimate goal of making the site safer for people or the environment”, language is removed.

We question whether your agency really intends for this rule to apply to construction workers who encounter diesel-contaminated or heavy-oil contaminated soils incidental to highway construction; as there are other more appropriate worker safety laws to protect workers in such cases. Other existing laws protect workers who move contaminated soils incidental to construction projects (i.e., removing contamination without the goal of making the site safer for people or the environment.”). Washington State Department of Transportation believes that this rule should remain focused on clean-up hazardous materials workers, and not apply to contaminated soils incidental to construction projects.

Regardless of your intent for this portion of the rule, the language remains vague and difficult to interpret. We request that it be modified to better clarify applicability to construction sites that encounter contamination.

#### **Department Response to Comment:**

No change.

The rule applies to sites and work activities and not to separate kinds of work sites, such as construction. If clean-up operations are performed at a site covered by the scope, it is covered by the rule whether or not it is a construction site.

### **3. Comment Received Relating to this Section:**

#### **WAC 296-843-300 Definitions**

The definition for “uncontrolled hazardous waste site” is also somewhat vague. The definition includes “...an area identified as an uncontrolled hazardous waste site by a governmental body, whether federal, state, local or other...” We request this language be changed to “...an area identified as an uncontrolled hazardous waste site by a federal, state, or local environmental regulatory agency.”

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**Department Response to Comment:**

Rule changed

The phrase was removed from the definition, since they are redundant examples of sites covered by the rule. The definition now reads as follows:

**Uncontrolled hazardous waste site**

An area where an accumulation of hazardous substances creates a threat to the health and safety of individuals or the environment or both. Examples include: Former municipal, county, or state landfills, locations where illegal or poorly managed waste disposal has taken place, or property of generators or former generators of hazardous substance waste (surface impoundments, landfills, dumps, and tank or drum farms).